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August 18, 2000

Mary Cottrell
Secretary
Massachusetts Department of Telecommunications and Energy
One South Station, 2nd Floor
Boston, MA 02110

Re: D.T.E. 98-57 Phase III

Dear Secretary Cottrell:

Enclosed for filing in the above captioned matter, please find Digital Broadband Communications, Inc.'s Initial Brief.

Should there be any questions regarding this filing, please contact the undersigned.

Sincerely,

E. Ashton Johnston
Vincent M. Paladini

Attorneys for Digital Broadband Communications, Inc.

VMP/mwm
Enclosures

cc: Cathy Carpino, Esq., Hearing Officer (2)
Michael Isenberg, Director, Telecommunications Division
Service List

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Investigation by the Department on its own Motion as to the propriety of the rates and Charges set forth in M.D.T.E. No. 17, filed with The Department on May 5, 2000 by New England Telephone and Telegraph Company d/b/a Bell Atlantic – Massachusetts	))))))	**D.T.E. 98-57, Phase III**

INITIAL BRIEF OF DIGITAL BROADBAND COMMUNICATIONS, INC.

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August 18, 2000

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DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

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INITIAL BRIEF OF
DIGITAL BROADBAND COMMUNICATIONS, INC.

Digital Broadband Communications, Inc. ("Digital Broadband"), by its attorneys and pursuant to the schedule established by the Massachusetts Department of Telecommunications and Energy (the "Department" or the "D.T.E."), hereby submits its initial brief in the Department's investigation as to the propriety of proposed rates, terms and conditions for line sharing and Digital Subscriber Line ("DSL") services, as set forth in Tariff No. 17 (the "Proposed Tariff") submitted by Verizon Communications, formerly known as the New England Telephone and Telegraph Company d/b/a Bell Atlantic Massachusetts ("Verizon")[1] on May 5, 2000 and subsequently revised.

I. Summary

Digital Broadband is a Massachusetts-based provider of broadband services and is aggressively building out its network to provide services to consumers in all areas of the state.

1 Although nearly all of the filings in this investigation refer to the former New England Telephone and Telegraph Company d/b/a Bell Atlantic Massachusetts ("BA-MA"), we refer to Verizon, BA-MA's successor-in-interest, throughout this Brief, except when referring to exhibits and other record evidence submitted to or by BA-MA.

To accomplish its goals, Digital Broadband must obtain access to Verizon's network and premises. In a series of orders implementing the Telecommunications Act of 1996, the FCC has adopted rules setting forth Verizon's obligations to make such access available, including its obligation to line share. The rates, terms, and conditions by which Digital Broadband accesses Verizon's network and premises, including line sharing, are a fundamental component of Digital Broadband's ability to compete in the state and serve its customers quickly and efficiently.

As Digital Broadband's Direct Testimony and its testimony at the August 1-3, 2000 Public Evidentiary Hearing ("Hearing") show, while Verizon has been line sharing with itself in Massachusetts through its Infospeed offering since March 1999, it has made little effort to make line sharing available to Digital Broadband and others. The Proposed Tariff reflects this: As addressed in the testimony of Digital Broadband's Vice President of Network Services, Terry Landers, Verizon has proposed grossly excessive provisioning intervals and inflated fees for the most basic services, and has denied access to loop qualification information needed by Digital Broadband to efficiently provision its services. These provisions and others in the Proposed Tariff are unjust, unreasonable, and anticompetitive.

Digital Broadband recommends that the Department require Verizon to: (1) conform its tariff to the FCC's rules regarding significant degradation to one provider's service when two carriers are line sharing; (2) complete its collocation augment application review and processing within no more than 30 calendar days; (3) complete line sharing installations pursuant to the "3-2-1 Interval" and establish intervals for orders of 10 or more loops; (4) establish interim rates for augment application fees and loop conditioning that are substantially below those proposed by Verizon; (5) eliminate unnecessary loop qualification, OSS, wiring, and testing fees; and (6) require Verizon to make all loop qualification data available in the same time and manner as they are available to Verizon. These recommendations are fully supported by the testimony and other evidence before the Department.

II. Standard of Review

The Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the "Communications Act"), imposes a duty upon Verizon, as an incumbent local exchange carrier ("ILEC") to provide unbundled network elements on a nondiscriminatory basis. Specifically, the Communications Act states that ILECs are required:

> [t]o provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the requirements of this section and section 252....[2]

The Communications Act also requires ILECs to provide physical collocation on a nondiscriminatory basis. Specifically, ILECs have an obligation:

> [t]o provide, on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, for physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier....[3]

On December 9, 1999, the Federal Communications Commission ("FCC") adopted rules, codified at 47 C.F.R. § 51.319(h), establishing the right of competitive local exchange carriers

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[2] 47 U.S.C. § 251(c)(3)

[3] 47 U.S.C. § 251(c)(6).

("CLECs") to line share by providing services on the "high frequency portion of the local loop,"[4] and requiring ILECs to make the high frequency portion of the loop available, as an unbundled element, on a nondiscriminatory basis under Sections 251(d)(2) and (c)(3) of the Communications Act.[5] Line sharing allows a CLEC, such as Digital Broadband, to utilize the high frequency portion of the local loop at the same time Verizon uses the voiceband portion of the loop.

These statutory obligations apply to an ILEC whether it seeks to fulfill its obligations under the Communications Act by filing a tariff or entering into an interconnection agreement with another carrier.[6] Pursuant to MASS. G.L. c. 159 §§ 19 and 20 and the Communications Act, the Department must determine whether Verizon's proposed rates, terms, and conditions in the Proposed Tariff are "just and reasonable." In the *Line Sharing Order,* the FCC urged state commissions to establish provisioning intervals, performance requirements, and rates consistent with the FCC's rules, and to set penalties for non-compliance. States may impose additional or

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4 The "high frequency portion of the local loop" generally corresponds to those frequencies that remain available for use when analog "voiceband" signals are present on a specific loop, and excludes guardband frequencies above the voiceband. Analog voiceband transmissions utilize frequencies of 4 kilohertz (kHz) or less, and rarely fall outside of the 300 Hz to 3400 Hz range; the guardband typically is between 4 kHz and 21 kHz.

5 *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, *Third Report and Order*, and *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, *Fourth Report and Order*, 14 FCC Rcd 20912 (1999) ("*Line Sharing Order*").

6 Investigation by the Department on Its Own Motion as to the Propriety of the Rates and Charges Set Forth in M.D.T.E. Nos. 14 and 17, D.T.E. 98-57, Order (March 24, 2000) ("*D.T.E. 98-57 Phase I Order*"), pp. 8-9.

modified line sharing requirements, as long as they are consistent with the rules and policies set forth in the *Line Sharing Order*.[7]

III. Statement of Interest

Digital Broadband is a competitive local exchange carrier based in Waltham, Massachusetts. Digital Broadband provides high-speed data and telecommunications services, including broadband data transport, local and long distance telecommunications, Internet, and other value-added integrated applications.

Digital Broadband's network buildout began in Massachusetts just over one year ago. During that time, Digital Broadband has collocated in, and is offering services from, 68 central offices in Massachusetts. Digital Broadband also has applied to collocate in an additional 174 central offices throughout the Commonwealth by the end of this year.

Line sharing and xDSL[8] services are and will continue to be fundamental and critical components of Digital Broadband's efforts to provide broadband services to its retail customers throughout Massachusetts. The rates, terms, and conditions by which Verizon will make these services available to Digital Broadband will directly and substantially impact Digital Broadband's ability to compete in the state and deliver services in a timely and efficient manner.

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7 *Line Sharing Order*, 14 FCC Rcd at 20987, ¶ 174.

8 Wireline broadband services utilize digital subscriber line technology ("DSL") to send signals over copper wires to packet switches. "xDSL" signifies a generic transmission technology, as opposed to a specific DSL "flavor," such as ADSL (asymmetric digital subscriber line), HDSL (high-speed digital subscriber line), UDSL (universal digital subscriber line), VDSL (very-high speed digital subscriber line), and RADSL (rate-adaptive digital subscriber line). Some versions of xDSL support line sharing (that is, they are compatible with simultaneous analog voice transmissions over a single copper loop) because they do not use the "voiceband" frequencies, generally considered to extend from 300 to about 4000 Hertz. ADSL is particularly suited for line sharing because it does not interfere with analog telephone signals being

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In the *Line Sharing Order*, the FCC concluded that lack of access to the high frequency portion of the local loop materially diminishes the ability of CLECs to provide a full complement of broadband services to consumers, delays broad facilities-based market entry, and materially limits the scope and quality of competitor service offerings.[9] Unfortunately for competition and consumers in Massachusetts, Verizon's Proposed Tariff seeks to impose a combination of cost and delay on line sharing and xDSL services that constitutes a significant barrier to entry, harming competition and consumers in the Commonwealth.

When ILECs provide both broadband and voice service, they are essentially "line sharing with themselves." Verizon has been line sharing with itself in Massachusetts since March 1999 through its "Infospeed" offering, thereby gaining a critical head start in the market.[10] ILECs typically provide their own broadband services to their customers by deploying xDSL as a separate service that shares the same loop that provides voice service to the same customer. Verizon, however, refused to provide CLECs the same access to shared loops. As a result, to compete with ILECs for this market, Digital Broadband was forced to buy a second, unbundled loop, at substantial cost. This situation gave Verizon an overwhelming advantage in the broadband services markets,[11] enabling it to extend its local monopoly. Line sharing, as

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transmitted through the same loop. *See Line Sharing Order*, 14 FCC Rcd at 20929-30, ¶ 33; Ex. 1, Direct Testimony of Bruce F. Meacham, p. 5, ll. 4-15.

9 *See Line Sharing Order*, 14 FCC Rcd at 20926, ¶ 25.

10 *See* Verizon's Response to Covad RR #3.

11 According to the FCC, while ILECs and CLECs have similar market shares for the large business broadband market, ILECs dominate CLECs in the residential and small business markets by a ratio of 17:1.

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mandated under the Communications Act, is intended to allow CLECs to compete with ILECs for the provision of xDSL-based broadband services.[12] The Department's decision in this proceeding, therefore, is of critical importance both to competitors and consumers in the state.

IV. Argument

A. Verizon Is Not Entitled to Resolve on Its Own Disputes Regarding Interference Between Voice and Data on a Shared Line

Verizon attempts, through its Proposed Tariff, to usurp authority that belongs exclusively to the Department – the authority to resolve disputes regarding potential or actual interference between voice and data providers on a shared line. Verizon's Proposed Tariff and testimony make clear that Verizon has ignored applicable governing law. Verizon's position is flatly inconsistent with the FCC's *Line Sharing Order*.

1. The Proposed Tariff Would Permit Verizon to Deny Line Sharing Based on Its Unilateral Determination of a "Likelihood" of Interference and Would Permit Verizon to Terminate In-Service Line Sharing Arrangements

The Proposed Tariff states:

> The Telephone Company [i.e., Verizon] will not provide digital designed links if such conditioning is likely to degrade the voice grade service being provided to the Telephone Company's end user customer over that same loop.[13]

This provision reserves for Verizon the right to deny line sharing, but is silent about the process for determining whether conditioning "is likely to degrade" Verizon voice grade service.

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Large businesses tend to favor broadband technologies that are not well suited to line sharing. Residential and small business applications, however, are particularly good line sharing markets. *See Line Sharing Order,* 14 FCC Rcd at 20926, ¶ 25.

12 *See id.*

Verizon also gives itself the exclusive power to terminate in-service line sharing arrangements. The Proposed Tariff states:

> If a customer reports a trouble on its voice grade service and the Telephone Company determines the cause arises from the TC's [i.e., the CLEC's] advanced data services equipment, including but not limited to splitter problems or TC activities, the Telephone Company will take the following action.
>
> 1. Step 1 – Notify the TC and request to test the trouble on its advanced data service.
>
> 2. Step 2 – If the end user customer's service is degraded such that the end user customer cannot originate or receive voice grade calls or encounters unacceptable transmission, the Telephone Company may take steps to restore the end user customer's voice grade service.
>
> 3. Step 3 – The Telephone Company's restoration efforts may include the removal of the TC-provided splitter and other advanced services equipment from the end user customer's link.
>
> 4. Step 4 – Upon notification from the TC that the trouble has been cleared, the Telephone Company will restore the splitter and other advanced services equipment on the end user customer's link.[14]

This language permits Verizon to disconnect a CLEC's splitter and terminate a CLEC's data service based on nothing more than an undocumented, unverified report by a customer of "trouble" in its voice service.

2. <u>Applicable Law Establishes the Department as the Arbiter of Disputes Regarding Interference Between Voice and Data Services on a Shared Line</u>

The FCC's *Line Sharing Order* makes clear that Verizon has no unilateral right to determine that conditioning a line will result in interference to voiceband service. That *Order* is

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13 Proposed Tariff, Part B Section 19.1.2.B.1, p. 1.

equally clear that Verizon cannot unilaterally terminate in-service line sharing arrangements. That authority belongs to state commissions, including the Department.

The FCC's rules require Verizon to condition a loop in order to allow a requesting carrier to access the high frequency portion of the loop.[15] Where such loop conditioning

> will significantly degrade ... the voiceband services that the incumbent LEC is currently providing over that loop, the incumbent LEC must either: (A) Locate another loop that has been or can be conditioned, migrate the incumbent LEC's voiceband service to that loop, and provide the requesting carrier with access to the high frequency portion of the alternative loop; or (B) Make a showing to the relevant state commission that the original loop cannot be conditioned without significantly degrading voiceband services on that loop, as defined in [47 C.F.R.] § 51.233, and that there is no adjacent or alternative loop available that can be conditioned or to which the customer's voiceband service can be moved to enable line sharing.[16]

Clearly, Verizon cannot simply inform a requesting carrier that conditioning will degrade Verizon's voice service and deny the loop. Rather, Verizon "*must*" migrate its voiceband service to another loop capable of being line shared, *or* prove to the Department that (1) the original loop cannot be conditioned without "significantly degrading" the voiceband service on that loop *and* (2) no alternative loop is available.[17] The FCC defines "significantly degrade" as "an action that noticeably impairs a service from a user's perspective."[18]

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14 Proposed Tariff, Part B Section 19.1.5.D, pp. 3-4.

15 47 C.F.R. § 51.319(h)(5)(i).

16 47 C.F.R. § 51.319(h)(5)(ii).

17 *Id.* (emphasis added). *See also Line Sharing Order*, 14 FCC Rcd at 20954, ¶ 86 ("We will require that the incumbent refusing a competitive carrier's request to condition a loop make an affirmative showing to the relevant state commission that conditioning the specific loop in question will significantly degrade

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The FCC's rules also prohibit Verizon from unilaterally resolving asserted voiceband service troubles on a shared line. The rules establish a two-step process for resolving interference disputes involving deployed technologies. First, "[w]here a carrier claims that a deployed advanced service is significantly degrading the performance of … traditional voiceband services, that carrier must notify the deploying carrier and allow the deploying carrier a reasonable opportunity to correct the problem."[19] If the asserted degradation "remains unresolved by the deploying carrier(s) after a reasonable opportunity to correct the problem, *the carrier whose services are being degraded* must establish before the relevant state commission that a particular technology deployment is causing the significant degradation."[20] A carrier's claims of significant degradation "must be supported with specific and verifiable information" that must be provided to the deploying carrier and, if necessary, to the state.[21]

Under the *Line Sharing Order*, if Verizon asserts that its voiceband service on a line-shared loop is experiencing significant degradation, it must give the data carrier notice, allow it to conduct testing (which in Digital Broadband's case may be done immediately using installed test equipment), provide information necessary to correct the problem, and allow the data carrier

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voiceband services."). The FCC noted its belief that "an incumbent LEC will rarely, if ever, be able to demonstrate a valid basis for refusing to condition a loop under 18,000 feet," and encouraged the states "to deter incumbent LECs from misusing these measures for anti-competitive purposes." *Id.*

18 *Line Sharing Order,* 14 FCC Rcd at 21002, ¶ 202.

19 47 C.F.R. § 51.233(a).

20 47 C.F.R. § 51.233(b) (emphasis added).

21 47 C.F.R. § 51.233(c).

an opportunity to correct the problem. If the data provider's efforts are not successful, Verizon then must prove to the Department that the technology used by the data provider is causing degradation to the voice service. Only after Verizon successfully proves its case to the Department is a data provider required to discontinue deployment of interfering technology and migrate to an alternative technology.[22]

3. Verizon Has Failed to Justify Its Proposed Tariff

The FCC established specific procedures for resolving such disputes expressly because it was "concerned that some incumbent LECs may plan to take unilateral action against allegedly interfering competitive LEC data services, rather than comply with these processes. We emphasize, therefore, that incumbent LECs are required to follow these procedures."[23] The Proposed Tariff, however, says nothing about these procedures.

At the Hearing, Verizon asserted that "only in the event there's a disagreement between [Verizon and a competing carrier] as to whether conditioning will in fact degrade voice service that we would then turn to the Commission."[24] This statement is at odds with the Proposed Tariff, which says nothing about attempting to resolve conditioning issues with a requesting

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22 47 C.F.R. § 51.233(d); *Line Sharing Order*, 14 FCC Rcd at 21006, ¶ 208. The FCC has adopted an exception to this "discontinue and migrate" rule: where the degraded service is a "known disturber" and the newly deployed technology is presumed to be acceptable for deployment, the degraded service shall not prevail. 47 C.F.R. § 51.233(e). An example of such a "known disturber" is analog T1. *See Line Sharing Order*, 14 FCC Rcd at 21010, ¶ 241. The FCC established this exception to insure that older, noisier technologies nearing the end of their useful life cycle do not preclude the use of newer technologies. The FCC also recommended that states take specific action to determine the future disposition of known interfering technologies.

23 *Line Sharing Order*, 14 FCC Rcd at 21006, ¶ 207.

24 Hearing Transcript (Mr. Walker), pp. 15-16, ll. 23-24 1-20.

carrier. Moreover, even in the event of a disagreement between Verizon and a requesting carrier, under the FCC's rules a requesting carrier is not required to negotiate a resolution with Verizon. Rather, it is Verizon that "must" either migrate to another line that can be shared, or prove to the Department that the original loop cannot be conditioned and that no alternative is available.

Verizon repeatedly has stated that it would terminate a CLEC's data service *before* going to the Department to prove that voice service is being degraded,[25] and at the hearing Verizon confirmed that in the "normal process, Department involvement is not contemplated" before Verizon takes unilateral action.[26] The record is clear that Verizon will not voluntarily agree to affirmatively prove its case to the Department technology. In the absence of such a demonstration to the Department, however, Verizon is legally barred from disconnecting another carrier's data service.

It is imperative that Verizon's tariff be consistent with federal law on this matter. As Verizon stated at the hearing, it has entered into line sharing agreements with Covad Communications Company ("Covad") and with Rhythms Links, Inc. ("Rhythms"), and those agreements contain language similar to the Proposed Tariff on this matter.[27] At the same time, Verizon asserts that if any carrier enters into an agreement containing language similar to that in the Proposed Tariff, such an agreement constitutes evidence that the Proposed Tariff is

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25 *See* Ex. DTE-BA-MA 2-4; Hearing Transcript (Mr. White), p. 22, ll. 5-8.

26 Hearing Transcript (Mr. White), p. 27, ll. 8-11.

27 *See* Hearing Transcript, pp. 13-16.

"reasonable."[28] This assertion evidences the inherent arrogance of a monopolist with superior bargaining power. As long as the Proposed Tariff stands, Verizon has no incentive to negotiate any alternative.

4. Recommended Decision

Significant degradation of voiceband service by xDSL technologies should be rare.[29] Should Verizon receive a complaint of voiceband interference, however, it should be able to resolve the matter quickly through testing and other cooperative efforts with the CLEC, without resort to the Department. Only if the matter is not resolved cooperatively, which should be infrequent, should parties come to the Department for resolution. This approach is practical and entirely consistent with the FCC's rules.

Verizon's Proposed Tariff would nullify a CLEC's rights under the FCC's rules. The Department should not cede any of its rights as the arbiter of such matters to Verizon. In light of the clear discrepancy between Verizon's Proposed Tariff and governing law on the issue, Digital Broadband urges the Department to require Verizon to amend the Proposed Tariff to incorporate the FCC's mandatory processes. Specifically, Tariff 17 should state that when Verizon claims that a loop cannot be conditioned because such conditioning will significantly degrade Verizon's voiceband service, Verizon shall migrate the voiceband service to another loop capable of supporting the requested line sharing arrangement, or demonstrate to the Department that significant degradation of the voiceband service will occur and no alternative loop is available.

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28 Ex.VZ-MA-4, Panel Rebuttal Testimony, p. 18-19, ll. 20-22 & 1-6; Ex.VZ-MA-3, Direct Testimony of Amy Stern, p. 20, ll. 1-13.

Tariff 17 also should be amended to state that all determinations of whether an in-service line shared arrangement is being significantly degraded shall be made only by the Department.

Digital Broadband suggests that the Tariff also could expressly allow Verizon and a competing carrier to resolve interference disputes themselves, including mutually acceptable means of testing, terminating and restoring a customer's voice and/or data service, without resort to the Department. Such procedures should include timely notice by the carrier complaining of interference, and good faith negotiations, but prohibit unilateral termination of service.

B. Verizon's Proposed 76-Business Day Collocation Augment Interval Is Unreasonably Long

Verizon proposes that it be allowed 76 business days to complete physical collocation arrangements ordered by CLECs to implement line sharing. As the testimony of Digital Broadband witness Terry Landers and others demonstrated, the proposed interval is unreasonably long, has no technical justification, and will, if approved, delay the delivery of competitive broadband services to consumers in Massachusetts. The proposed interval also is inconsistent the FCC's recent order on collocation. The Department should reject Verizon's proposed interval and instead approve a 15- or 30-calendar-day interval, depending on the type of arrangement ordered.

1. <u>The Proposed Tariff Makes No Distinction Based Upon Work Performed</u>

Verizon proposes to subject carriers seeking to implement line sharing in Massachusetts to the same 76-business day delay that it imposes on an initial collocation order, regardless of

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29 Most xDSL technologies are presumed acceptable for deployment. *See Advanced Services Line Sharing, Order*, 14 FCC Rcd at 20998, ¶ 195.

whether there is any difference in the actual work performed and regardless of the actual amount of time necessary to complete the work. The Proposed Tariff states:

> A. The physical and virtual collocation arrangement implementation interval is 76 business days for all standard arrangement requests which were properly forecast six months prior to the application date. Intervals for non-standard arrangements shall be mutually agreed upon by the CLEC and the Telephone Company.
>
> B. The following standard implementation milestones will apply unless the Telephone Company and the CLEC jointly decide otherwise. The Telephone Company and the CLECs shall work cooperatively in meeting these milestones and deliverables as determined during the joint planning process. A preliminary schedule will be developed outlining major milestones.
>
> 1. Day 1 – CLEC submits completed application and associated fee.
>
> 2. Day 11 – Telephone Company notifies CLEC that request can be accommodated.
>
> 3. Day 76 – Telephone Company and CLEC attend methods and procedures meeting. Telephone Company turns over multiplexing node to CLEC.[30]

2. Recent FCC Rule Changes Require Verizon to Submit a Revised Tariff

On August 10, 2000, the FCC affirmatively rejected lengthy collocation intervals.[31] In its *Advanced Services Collocation Reconsideration Order*, the FCC ordered ILECs, including Verizon, to complete *all* physical collocation arrangements within 90 calendar days.[32] Recognizing "the critical importance of timely collocation provisioning,"[33] the FCC ordered

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30 Proposed Tariff, Part E, Sections 1.1.2.A and 1.1.2.B, p. 1.

31 *Deployment of Wireline Services Offering Advanced Telecommunications Capability,* CC Docket No. 98-147, *Order on Reconsideration and Second Further Notice of Proposed Rulemaking,* FCC 00-297 (rel. Aug. 10, 2000) ("*Advanced Services Collocation Reconsideration Order*").

32 *Id.* ¶ 27.

33 *Id.* ¶ 36.

Verizon to amend its state tariffs to bring them into compliance with the new 90-day standard.[34] Verizon must file such an amendment within 30 days of the effective date of the *Advanced Services Collocation Reconsideration Order*, and the amendment will take effect at the earliest time permitted under Massachusetts law.[35] Massachusetts may set a longer or a shorter interval, but only if requested and supported by Verizon at the time it files its conforming amendment.[36]

The new rules are a significant change in law. After earlier refraining from establishing standards for collocation provisioning, the FCC has reviewed an extensive record of ILEC abuses throughout the United States and has decided that national standards, modeled on standards adopted by the states in response to such abuses, are necessary to achieve the pro-competitive goals of the Communications Act. As the FCC stated, "an interval of relatively short duration is necessary to help ensure timely deployment of advanced services and other telecommunications services."[37] Furthermore, the FCC has recognized that shorter intervals may be appropriate for certain physical collocation arrangements,[38] such as augments to existing collocation arrangements for purposes of line sharing.

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34 *Id.*

35 *Id.* The new rule will become effective 30 days after it is published in the Federal Register, which has not yet occurred. It is possible, however, that the new rule will become effective and that Verizon will have filed its conforming tariff amendment prior to October 2, 2000, the date on which the D.T.E. has indicated it expects to release its decision in this proceeding. Under Massachusetts law, Verizon's amendment may become effective on 30 days' notice.

36 *Id.*

37 *Advanced Services Collocation Reconsideration Order*, ¶ 27.

3. Verizon Has Failed to Prove that Its Proposed Interval Is Reasonable

As Terry Landers testified, there is no technical justification for a collocation augment in the line sharing arrangements for which Digital Broadband has planned.[39] Digital Broadband will use "Option A" line sharing arrangements, meaning it will own and install its own splitter within its existing collocation space, and access to line sharing is simply a matter of connecting Verizon's loops to the Digital Broadband's equipment at the point of termination bay, often using pre-existing facilities.[40] Ms. Landers, who has extensive experience as a frame supervisor, testified that the physical work required is minimal and can be performed quickly, and that there is no technical basis for work that Verizon claims is necessary, such as installing shielded cabling, and that Verizon's purported basis for the augment is related to its own OSS issues.[41]

Verizon has conceded that the reuse of existing cable for cross connections is possible and that CLECs (such as Digital Broadband) utilizing "Option A" arrangements will not need to change their existing collocation arrangements.[42] Verizon also has admitted that the work needed

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38 *Id.* at ¶ 37.

39 *See* Hearing Transcript (Ms. Landers), p. 327, ll. 20-23.

40 Ex. DBC-1, Direct Testimony of Terry Landers, p. 6, ll. 13-17.

41 *See id.* at pp. 6 – 9 (Ms. Landers); *see also* Hearing Transcript, p. 328, ll. 4-17 (Ms. Landers). As Digital Broadband testified, the work Verizon has stated is necessary appears to be related to its OSS needs, not technical needs. See Ex. DBC-1, Direct Testimony of Terry Landers, p. 9, ll. 3-14.

42 Hearing Transcript (Ms. Stern), p. 341, ll. 20-22; Ex. VZ-MA-2, Direct Testimony of Bruce F. Meacham, p. 55, ll. 14-21; *see also* Proposed Tariff, Part E Section 2.5.1, p.23.

to accomplish collocation augments varies significantly,[43] yet Verizon inexplicably has never considered proposing different intervals based on those differences.[44] Rather than establish different intervals for different types of orders, Verizon proposes a "one size fits all" interval. Verizon's failure to account for – or even consider – the type and amount of work that must be performed is arbitrary and immensely costly to CLECs – and therefore anticompetitive. For example, an augment to existing physical collocation space does not require the same 10-day sub-interval applicable to initial collocation applications that is used to determine space availability and develop a price quote for initial collocation arrangements.[45] These are not steps necessary to process augments for line sharing in existing collocation arrangements. Verizon also asserts that it needs time to investigate whether CLEC equipment is NEBS compliant, even though it admits that it is already familiar with much of that equipment,[46] and even though NEBS-compliant equipment is required by the FCC and is a precondition to a CLEC submitting a collocation request.[47]

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43 Hearing Transcript (Mr. Virga), p. 350, ll. 16-19, p. 351, ll. 10-13. This testimony contradicts Verizon's Direct Panel Testimony, Ex. VZ-MA-2, Direct Testimony of Bruce F. Meacham, p. 21, ll. 4-9 ("the work required to implement a line sharing collocation augment is essentially the same as for other collocation augments. . . . Thus, there is no basis for applying a substantially shorter interval for line sharing.").

44 *Id* at p. 352, ll. 2-6.

45 *See* Proposed Tariff Part E, Section 1.1.2.B.2, p. 1; Hearing Transcript (Mr. Virga), p. 356, ll. 20-23 ("We have a ten-business-day interval to get back, notify of space availability, and give a rate quote. And that includes doing the site surveys.").

46 Hearing Transcript (Mr. Virga), p. 359, ll. 10-20.

47 *Deployment of Wireline Services Offering Advanced Telecommunications Capability,* CC Docket No. 98-147, *First Report and Order and Further Notice of Proposed Rulemaking*, 14 FCC Rcd 4761, 4781 (1999), ¶ 35 ("*Advanced Services First Report and Order*").

Verizon's proposed interval no longer may be considered reasonable for an *initial* caged or cageless collocation arrangement requiring significant space preparation and construction, and without any rational basis when the actual amount of work that is required to be performed for line sharing is considered.[48] Despite numerous requests,[49] Verizon has refused to explain in any detail what it does during the 76 business days. In response to a specific request for an itemized list of sub-intervals, Verizon simply listed 14 activities without ascribing any time period associated to any of them.[50] It appears that Verizon has allocated a majority of the proposed interval to its own internal processes, and not to the actual performance of the work order. As Verizon's James. Virga testified: "[w]e have to process and track applications. We have to schedule and complete the site surveys. There's a detailed engineering step...."[51] Such redundancies and inefficiencies have been criticized by the FCC.[52] At bottom, Verizon has failed to articulate a justification for 76 business days.[53]

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48 "Entire collocation arrangements are far more complex than cross connect/tie cable and splitter line sharing installations. Building an entire collocation arrangement, even cageless, requires space preparation, cabling and installation of racks. Such installation requires much more planning and effort than a simple cross connect/tie cable and splitter installation." Ex. 1, Direct Panel Testimony of Rhythms/Covad, pp. 47-48, ll. 10-11 & 4-9.

49 *See, e.g.*, Verizon Response to Covad RR #6; RL/CVD RR 1-93.

50 *See* Verizon Response to Covad RR #6. Many of the activities listed appear to be capable of being performed quickly, perhaps even simultaneously. At least four of the activities occur within the first 10 days, and some of the activities appear unnecessarily duplicative with respect to line sharing augments (for example, receipt of completed application, and receipt collocation request response form). *See id.*

51 Hearing Transcript (Mr. Virga), p. 338, ll. 12-17.

52 *See Advanced Services Collocation Reconsideration Order,* ¶ 28.

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4. Different Augment Intervals Are Not Discriminatory

Verizon erroneously asserts that shorter intervals for collocation augments will discriminate against other CLECs. Verizon says that a CLEC requesting a collocation augment would be "jumping the line" ahead of a CLEC that requests an initial collocation.[54] CLECs requesting different services – which Verizon concedes require different time periods to complete[55] -- can and should be placed on two different processing tracks, however. Any approved interval for collocation augments would apply to *all* CLECs that apply for it, and would not discriminate against any particular CLEC. Similarly, any CLEC applying for an initial collocation would be subject to the same interval as all other CLECs ordering similar services. In fact, Verizon has testified that it occasionally accomplishes collocation arrangements in less than 76 business days.[56] Yet Verizon has not suggested that when it completes one order in less time than it completes an order for comparable services, it is discriminating against the CLEC whose order took more time. This is not discrimination, but

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53 It must be noted that "76 business days" is well over 100 calendar days. For example, a randomly selected 76-business day period beginning on July 1, 2000 would end on October 16, 2000 – an interval of 108 calendar days. Furthermore, that period encompasses three national holidays and possibly additional state holidays or other days that Verizon does not deem "business days." Thus, at a minimum, the 76-business day period consists of at least 111 calendar days. Moreover, Verizon's Proposed Tariff does not define "business day," thereby giving Verizon even more flexibility and control over the timing of the completion of work requested by a competing carrier.

54 Ex. VZ-MA-3, Direct Testimony of Amy Stern, p. 22, l. 13

55 Hearing Transcript (Mr. Virga), p. 351, ll. 10-24 & p. 352, l. 1.

56 Hearing Transcript (Mr. Virga), p. 340, ll. 10-14. Indeed, the FCC has "encourage[d] states to adopt shorter provisioning intervals in circumstances where the nature of the collocation arrangements may render shorter provisioning intervals particularly appropriate," *Advanced Services Collocation Reconsideration Order,* ¶ 37.

rather a reasonable response to different circumstances. Under the Communications Act, such reasonable distinctions are permitted, and are not discriminatory.[57]

5. Recommended Decision

Verizon has failed to prove that its proposed 76-business day interval for line sharing augments is just and reasonable. As arbitrators in Texas and Pennsylvania have recently found, 30 calendar days is sufficient to perform cable and splitter augments.[58] Even less time is required for Option A arrangements. Digital Broadband urges the Department to establish a 15-calendar day interval for Option A arrangements where existing equipment and facilities are used, and a 30-calendar day interval for arrangements where the installation of new equipment and facilities is required. These proposals are technically feasible and honor the goals of the Act by promoting parity at the earliest opportunity.

C. Verizon's Proposed Installation Intervals Are Unreasonably Long, or Nonexistent

Verizon proposes a seven-business day ("0-6") installation interval for fewer than 10 loops, and proposes no specific interval for 10 or more loops, instead stating that the interval would be "negotiated". Neither of these proposals is reasonable. The Department should require Verizon to adhere to the "3-2-1 Interval" for orders of fewer than 10 loops, and to establish reasonable intervals for larger orders.

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57 *See, e.g., National Ass'n of Regulatory Util. Comm'rs v. FCC*, 737 F.2d 1095, 1136 (D.C. Cir. 1984) ("The Communications Act does not prevent all discrimination ... but only unreasonable discrimination.").

58 Ex. 1, Panel Testimony of Rhythms/Covad, p. 47, ll. 10-11 & p. 48, ll. 4-9.

1. Verizon Proposes a Seven-Day Installation Interval for Fewer than 10 Loops and Makes No Proposal for 10 or More Loops

The Proposed Tariff provides for a "6 business day" installation period after loop pre-qualification is completed for orders of one to nine links, and for a "negotiated interval" for orders of 10 or more links.[59]

2. Relevant Law Demonstrates that the "3-2-1 Proposal" Is Feasible

The FCC has urged all states to support the establishment of line sharing provisioning intervals that are "based on" the time required to provision xDSL-capable loops.[60] Verizon, however, asserts that the FCC intended that CLECs are only "entitled to a provisioning interval equivalent to the ILEC's standard [six business day] DSL service provisioning interval."[61]

Covad and Rhythms have recommended the adoption of the 3-2-1 Interval in Massachusetts.[62] Pursuant to their proposal, assuming a requested loop does not need conditioning, from June 6 through September 7, 2000, line sharing loop access must be provisioned within three days; from September 7, 2000 through December 31, 2000, line sharing access must be provisioned within two days; and thereafter line sharing access must be provisioned within 24 hours.[63] Digital Broadband agrees.

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[59] Proposed Tariff, Part A, Section 3.2.10.

[60] *Line Sharing Order*, 14 FCC Rcd at 20962, ¶ 107.

[61] Ex. VZ-MA-3, Direct Testimony of Amy Stern, p. 16, ll. 18-20.

[62] Ex. 1, Panel Testimony of Rhythms/Covad, pp. 40-41.

[63] *Id. See also* Hearing Transcript (Ms. Landers), p. 159, ll. 19-24--p. 160, l. 19.

In the *Line Sharing Order*, the FCC stated that the xDSL provisioning interval is not a limitation, and emphasized that "states are free, and indeed, are encouraged to adopt more accurate provisioning standards for the high frequency portion of the loop."[64] The FCC cited favorably the Texas Commission's requirement that ILECs must provision 95% of xDSL orders within three business days.[65] The FCC intended that the states look to the ILEC's current xDSL provisioning process as the baseline from which to calculate an appropriate line sharing provisioning interval, and following the FCC's explicit guidance, several state commissions have found that the provisioning interval for line sharing should be shorter than the interval for stand-alone loops.[66]. Digital Broadband believes that this can be easily accomplished by subtracting the time allocated to activities that do not pertain to line sharing provisioning from Verizon's provisioning interval for stand-alone loops.[67]

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64 *Line Sharing Order*, 14 FCC Rcd at 20987, ¶ 174.

65 *Id.*

66 *See* Illinois Commerce Commission, Nos. 00-0312, 00-0313, *Hearing Examiner's Proposed Arbitration Decision* (July 24, 2000) ("*Illinois Proposed Arbitration Decision*") and *Interim Order*, Docket No. 00-DCIT-997-ARB (rel. July 25, 2000); Pennsylvania Utilities Commission, Docket No. A-310696F0002, Docket No. A-310698F0002, Recommended Decision (June 28, 2000) ("*Pennsylvania Arbitration Decision*").

67 Verizon's affiliate in Pennsylvania has been ordered to comply with the 3-2-1 Proposal, and Verizon has given no reason why it should be held to a lower standard in Massachusetts.

3. The Record Supports a "3-2-1" Interval

There is substantial evidence that Verizon's proposed provisioning interval is excessive. At the Hearing, witnesses testified concerning the day-by-day sequence of events.[68] As Terry Landers testified, however, "I know from ... experience that you can get an order and get it wired, tested, and back to the customer within one day," and this experience is directly applicable to line sharing.[69]

Verizon's proposal ignores the important technical and operational differences between provisioning a stand-alone loop and provisioning line sharing. Verizon allocates a substantial amount of time to activities and contingencies that either are within Verizon's control or are unlikely to occur in the context of line sharing. Its testimony is replete with possibilities and contingencies,[70] which it admitted that it has not tracked.[71] Verizon also has admitted that, when the contingencies are removed, it is possible for Verizon to complete provisioning in one or two days.[72] These admissions undermine Verizon's tortured description of the work it performs on Days 0-6, and justify greater accountability to perform to reasonable standards.

Verizon's proposal to add an extra "negotiation" phase to the provisioning interval for every order over nine lines – of which Digital Broadband anticipates many in light of the pent-up

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68 *See generally* Hearing Transcript, pp. 106 – 151. *See also* Ex. VZ-MA-4, Panel Rebuttal Testimony, pp. 9-12.

69 Hearing Transcript (Ms. Landers), p. 319, ll. 21-24--p. 320, ll. 1-7.

70 *See* Ex.VZ-MA-4, Panel Rebuttal Testimony, pp. 9-12.

71 Hearing Transcript (Mr. Kelly), p. 300, l. 12-14. Verizon's testimony apparently was based simply upon responses from technicians about what could go wrong. *Id.* at ll. 3-8.

consumer demand for broadband services – is anticompetitive, creates no incentive for Verizon to perform efficiently, and is likely to result in substantial and unpredictable delays. Verizon has offered no reason for selecting nine loops as the cut-off for orders that would be subject to a specific provisioning interval.[73] Limiting the applicability of the 3-2-1 Interval to orders of nine loops or less would enable Verizon to control CLEC market penetration rates by imposing long "negotiated" provisioning intervals on larger orders.

4. Recommended Decision

The Department should adopt the 3-2-1 Interval. Eliminating unwarranted activities and unlikely contingencies from Verizon's proposal reveals that Verizon can commence provisioning access to the high frequency portion of the loop to facilitate line sharing within three days, and that migration to a 24-hour provisioning period is achievable. Because Verizon has not justified a nine-loop cap on the provisioning interval, the Department also should require Verizon either to eliminate the nine-loop limit or to establish a substantially higher limit that will safeguard against the potential for delay and discrimination.

D. Verizon Has Not Justified Many of Its Proposed Charges for Line Sharing

The FCC has determined that state commissions should set cost-based rates for unbundled network elements, utilizing the TELRIC (Total Element Long Run Incremental Cost) methodology, which sets prices based upon the "forward looking costs directly attributable to the

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72 Hearing Transcript (Mr. Kelly), p. 300, ll. 15-24 - p. 301, ll. 1-4.

73 *See* Hearing Transcript (Ms. Stern), p. 304, ll. 17-24 (stating the number is simply "based on prior experience with other unbundled services").